

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VINCENT CARCIA	:	CIVIL ACTION
	:	
v.	:	
	:	
FEDERAL EXPRESS CORP.	:	No. 99-3672

MEMORANDUM AND ORDER

J. M. KELLY, J. **JANUARY** , 2001

Presently before the Court are cross-motions for Summary Judgment filed by the Defendant, Federal Express Corp. ("FedEx") and the Plaintiff, Vincent Carcia ("Carcia"). Carcia filed suit in this Court alleging, in part, disability discrimination. Both parties now seek summary judgment on that claim. For the following reasons, Carcia's motion is denied and FedEx's motion is granted.

I. BACKGROUND

Relying on the parties' stipulations of fact and otherwise accepting as true the evidence of the nonmoving parties, and all inferences that can be drawn therefrom, the facts of the case are as follows. FedEx hired Carcia as a courier to pick up and deliver packages for its local customers in Bristol, Pennsylvania. This position involved frequent stair climbing and carrying of heavy packages. Approximately three years later, in February, 1996, Carcia fractured his ankle while on the job. Doctors treated his ankle with physical therapy, cortisone shots

and, eventually, surgery. Carcia then sought the assistance of FedEx's Human Capital Manager, Colin Bayne ("Bayne"). With Bayne's help, Carcia earned a position as a tractor trailer driver, which required less climbing and mobility than the courier's position. Carcia's new position required him to deliver packages between Philadelphia International Airport and FedEx's Bristol offices. Carcia also had to occasionally run a courier route in the Bristol area, delivering or picking up packages after returning from the Airport.

In October, 1996, Carcia aggravated his ankle injury. Between October, 1996 and February, 1997, Carcia worked intermittently at a shipping facility, but could not continue because the prolonged standing and loading caused him discomfort. A functional capacity evaluation later confirmed that stress on Carcia's ankle could aggravate his injury. This meant that Carcia could not perform any tasks that required frequent or constant stair climbing, or traversing steps higher than fourteen inches. Deep squatting and carrying heavy packages would also place added stress on his ankle. Consistent with the evaluation, Carcia's physician gave him a conditional release to return to work, but limited his activities to those that would not aggravate his injury.

Carcia began the search for another position with FedEx. Bayne informed Carcia that FedEx's Medical Leave of Absence

Policy afforded Carcia ninety days to find a job that his injury would allow him to fully perform; if Carcia could not find one within that time, FedEx would terminate his employment.¹ Bayne sent Carcia weekly job postings of positions available at FedEx,² and had him take a typing test to determine his suitability for a position as an operations agent. Carcia contacted Bayne about returning to his former position as a tractor trailer driver, but FedEx rejected the idea because it believed Carcia could not perform all of the essential functions of the job. FedEx stated that, although Carcia could drive the tractor trailer, he could not enter or exit it without assistance because cabs on all FedEx tractor trailers had steps greater than fourteen inches. It also cited Carcia's inability to make the local deliveries occasionally required of tractor trailer drivers.³ Carcia believed that, because of an ongoing conversion process within FedEx, some tractor trailer drivers were not required to perform courier services at all. Bayne investigated this possibility, but found that only the most senior drivers were afforded positions that had no courier duties. Because Carcia had only

¹ FedEx policy also required that Carcia have priority for any new job that became available.

² These listings did not contain every available position because local FedEx offices would occasionally omit open positions in order to allow for internal promotions.

³ Carcia contends that making these deliveries was not an essential function of a tractor trailer driver's job.

served as a tractor trailer driver for one year, he would not be eligible for that kind of job.⁴

FedEx offered Carcia a part-time position as a customer service agent in Vineland, New Jersey, but he rejected it because it was much farther away from his home and would pay him less than his previous job. Carcia argues that FedEx offered him the Vineland job in order to establish a pretextual reason for firing him. FedEx eventually terminated Carcia's employment on July 21, 1997, citing his inability under the Medical Leave of Absence Policy to secure another position within FedEx. Carcia unsuccessfully appealed the decision to FedEx management, and then instituted this action, alleging disability discrimination. Carcia also alleged age discrimination, wrongful termination and due process violations, but voluntarily dropped those claims. Carcia and FedEx have filed cross-motions for Summary Judgment on Carcia's disability discrimination claim, which the Court will now consider.

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56, a court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

⁴ Carcia disputes the extent to which the FedEx conversion process had been implemented, and his inability to secure one of the senior positions.

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The movant bears the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant fails to meet this burden under Rule 56(c), its motion must be denied.

If the movant adequately supports its motion, however, the burden shifts to the nonmoving party to defend the motion. To satisfy this burden, the nonmovant must go beyond the mere pleadings by presenting evidence through affidavits, depositions or admissions on file to show that a genuine issue of fact for trial does exist. Id. at 324; Fed. R. Civ. P. 56(e). An issue is considered genuine when, in light of the nonmovant's burden of proof at trial, the nonmovant produces evidence such that a reasonable jury could return a verdict against the moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding whether a genuine issue of fact exists, the court is to believe the evidence of the nonmovant, and must draw all reasonable inferences in the light most favorable to the nonmovant. Id. at 255. Moreover, a court must not consider the credibility or weight of the evidence presented, even if the quantity of the moving party's evidence far outweighs that of the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Nonetheless, a party opposing summary

judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

If the nonmoving party meets this burden, the motion must be denied. If the nonmoving party fails to satisfy its burden, however, the court must enter summary judgment against it on any issue on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322-23.

That two parties file cross-motions for summary judgment under Rule 56(c) does not necessarily make summary judgment appropriate. Reading Tube Corp. v. Employers Ins. of Wausau, 944 F. Supp. 398, 401 (E.D. Pa. 1996). In such a situation, "each side essentially contends that there are no issues of material fact from the point of view of that party." Bencivena v. Western Pa. Teamsters, 763 F.2d 574, 576 n.2 (3d Cir. 1985). Because each side therefore bears the burden of establishing that no genuine issue of material fact exists, "the court must consider the motions separately." Id. (citing Rains v. Cascade Indus., Inc., 402 F.2d 241, 245 (3d Cir. 1968)).

III. DISCUSSION

A. The Employment Discrimination Burden Shifting Scheme

Carcia's sole remaining claim alleges disability discrimination in violation of the Americans with Disabilities

Act ("ADA"), 42 U.S.C. § 12101 et seq. (1994). The McDonnell Douglas scheme of shifting burdens of production and persuasion controls the analysis of individual disparate treatment claims brought under the ADA. See generally McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); see also Reeves v. Sanderson Plumbing Prods., Inc., 120 S. Ct. 2097, 2106-09 (2000).

Under the general burden-shifting scheme in an individual disparate treatment claim where no direct evidence of discrimination exists, the plaintiff must begin by proving his prima facie case of discrimination by a preponderance of the evidence. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981). The elements of the prima facie case will vary depending on the facts alleged and the type of claim presented. If the plaintiff cannot meet this burden, his claim must fail. Satisfying this burden, however, dispenses with the most common non-discriminatory reasons for adverse employment actions and accordingly gives rise to a rebuttable presumption of discriminatory intent. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993); Burdine, 450 U.S. at 254. Although the ultimate burden of persuasion still remains with the plaintiff, the burden shifts to the defendant to produce a legitimate non-discriminatory reason for the adverse employment decision. Hicks, 509 U.S. at 507; Burdine, 450 U.S. at 254. This is merely a burden of production; the defendant need not prove that this

was the actual reason for the adverse employment action. Burdine 450 U.S. at 260. In the unusual scenario where a defendant cannot produce such a reason, judgment in favor of the plaintiff is appropriate. If the defendant can, however, the presumption of discriminatory intent is rebutted and drops from the case entirely. Hicks, 509 U.S. at 507; Burdine, 450 U.S. at 255 & n.10.

The burden then shifts back to the plaintiff to prove by a preponderance of the evidence that the employer's motivation for the adverse employment action was discriminatory. Reeves, 120 S. Ct. at 2106-09. To do this, the employee must prove by a preponderance of the evidence that the employer's legitimate non-discriminatory reason was pretextual. Id. Although a plaintiff may also present additional evidence of discriminatory animus, he may, if he chooses, rely solely on a showing of pretext in order to prove discriminatory intent. Id. (rejecting the "pretext plus" requirement adopted by many courts). The outcome of the case turns on whether the plaintiff can prove discriminatory intent; if he cannot, judgment in favor of the defendant is appropriate.

In the context of a motion for summary judgment, a defendant in this kind of case may prevail in one of two ways. First, the defendant may show that the plaintiff can raise no genuine issue of fact as to one or more elements of his prima facie case.

Spangle v. Valley Forge Sewer Auth., 839 F.2d 171, 173 (3d Cir. 1988). Second, the defendant may present a legitimate non-discriminatory reason for its actions and then show that the plaintiff can raise no genuine issue of material fact as to whether the proffered reason is a pretext for discrimination. Id. Stated conversely, if the plaintiff shows that such genuine issues of fact do exist, summary judgment is inappropriate.

B. Carcia's Prima Face Case

The ADA states that a covered employer may not "discriminate against a qualified individual with a disability because of that disability in regard to discharge and other terms, conditions and privileges of employment." 42 U.S.C. § 12112(a). Carcia's prima facie case under the ADA requires him to prove that: (1) he is "disabled" as that term is defined within the act; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) he has suffered an adverse employment action. Shaner v. Synthes, 204 F.3d 494, 500 (3d Cir. 2000). Although Carcia's firing clearly constitutes an adverse employment action, FedEx challenges his prima facie case because it believes he is neither disabled nor qualified for his position.

1. Carcia's Disability

A person is considered disabled under the ADA if he: (1) has a disability, a "physical or mental impairment that substantially limits one or more of the major life activities"; (2) has a "record of such an impairment"; or (3) is "regarded [by the employer] as having such an impairment." 42 U.S.C. § 12102(2). Carcia concedes that he has neither an actual disability nor a record of one. Consequently, his claim hinges on whether FedEx regarded him as having an impairment that substantially limits one or more major life activities.

Major life activities include, but are not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing and working. To survive the instant motion for summary judgment, Carcia must demonstrate the existence of a genuine issue of material fact concerning whether FedEx regarded him as substantially limited in one of these major life activities. Carcia claims that FedEx regarded him as being substantially limited in his ability to either climb stairs or work.⁵

Carcia concedes that his impairment, which prohibits him from constantly or frequently climbing stairs, does not amount to a disability. See, e.g., Kelly v. Drexel Univ., 94 F.3d 102,

⁵ Although the United States Supreme Court recently called into question whether major life activities included working, the Court will accept for purposes of these motions that they do. But see Sutton v. United Airlines, 527 U.S. 471, 492 (1999) (dicta).

106-08 (3d Cir. 1996). It is undisputed that FedEx regarded Carcia as having a limited ability to climb stairs. Because this limitation does not constitute a disability, Carcia must show that FedEx regarded him as having a greater limitation. The evidence, however, points to the contrary. There is no evidence concerning possible confusion by FedEx about the nature and severity of Carcia's injury.⁶ Instead, all of the evidence in this case demonstrates that FedEx did not regard Carcia as having any restriction other than his limited ability to climb stairs, squat and lift heavy packages.

Inability to work can constitute a disability, but only if an employee is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes." 29 C.F.R. § 1603.2(j)(3)(I). The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. Id. Carcia must therefore present a genuine issue of material fact regarding whether FedEx perceived his impairments as such a limitation. Carcia completely fails, however, to explain how FedEx regarded him as disabled. See Plf.'s Reply to Def.'s Mot. for Summary Judgment at 13-15. Although FedEx clearly regarded

⁶ Although Carcia has presented some evidence that FedEx believed another surgical procedure would return Carcia to full health, he has presented no evidence that FedEx misunderstood the present severity of his injury.

Carcia as unable to perform certain tasks, there is no evidence that it regarded him as unsuitable for an entire class of jobs. Indeed, FedEx worked with Carcia for ninety days to find him another position, eventually offering him one in Vineland, New Jersey. Carcia does cite the reports of a vocational expert and a disability management consultant, which both suggested that Carcia's intelligence, education, work history, employment record, the job market and ankle injury would combine to preclude him from employment in a broad range of jobs in various classes. Id. at 20-21. These reports do not show that FedEx regarded Carcia's ankle injury as a disability, however, because none of this information was available to FedEx at the time it decided to fire Carcia, and the reports do not focus solely on limitations caused by Carcia's ankle injury itself. These reports are therefore irrelevant to the determination of whether FedEx regarded Carcia's injury as a disability. Carcia has presented no evidence that FedEx regarded it as limiting him to that degree, and has therefore failed to demonstrate that FedEx regarded him as disabled.

Rule 56 nevertheless requires the Court to conduct its own examination of whether granting summary judgment is appropriate. Fed. R. Civ. P. 56(e) ("If the [nonmovant] does not so respond, summary judgment, if appropriate, shall be entered against the [nonmovant]."). Although Carcia's ankle injury may have

precluded him from working as a tractor trailer driver and certain similar jobs, Carcia conceded that it does not amount to a disability under the ADA. Neither can it be said that FedEx regarded his injury as a disability. The Court is satisfied that, because Carcia has not presented genuine issues of material fact concerning this element of his prima facie case, summary judgment in favor of FedEx is appropriate. The Court will therefore grant FedEx's Motion for Summary Judgment and deny Carcia's.

2. Carcia's Qualifications

Assuming that Carcia could prove FedEx regarded him as disabled, his prima facie case would also require him to show that he was "otherwise qualified" for his job. Under the ADA, an employee is considered a "qualified individual with a disability" if he can prove by a preponderance of the evidence that he: (1) "satisfies the prerequisites for the position, such as possessing the appropriate educational background, employment experience, skills, licenses, etc."; and (2) can "perform the essential functions of the position held or desired, with or without reasonable accommodations." Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 311 (3d Cir. 1999); Gaul v. Lucent Techs., Inc., 134 F.3d 576, 580 (3d Cir. 1996). Because both parties accept that Carcia satisfied the minimal prerequisites for employment as

a tractor trailer driver, his qualification for the job turns on whether he could perform its essential functions. This in turn depends on the exact nature of the job's essential functions; FedEx contends that the occasional courier duties of the job were among its essential functions, while Carcia suggests that these duties were ancillary to the main responsibility of driving the tractor trailer.

A job's "essential functions" are defined as "the fundamental job duties of the employment position," not its mere marginal functions. 29 C.F.R. § 1630.2(n). Evidence of whether a particular function is considered essential includes, among other things: (1) the employer's judgment; (2) written job descriptions; (3) the amount of time spend on that function; (4) the consequences of not requiring an employee to perform the function; (5) the work experience of former and current employees; and (6) the number of other employees available among whom the performance of a particular function may be distributed. 29 C.F.R. § 1630.2(n)(3). The determination of whether a function is essential to a job is a factual one that should be made on a case by case basis based upon all relevant evidence. 29 C.F.R. § 1630.2(n) app. In this case, Carcia could drive a tractor trailer, but could not make local deliveries because of the requisite stair climbing. The question becomes whether allowing Carcia to merely drive the tractor trailer without

making local deliveries would fundamentally change the job.⁷

Based upon all the relevant evidence in this case, Carcia has presented genuine issues of material fact that he was minimally qualified for his position. At the prima facie stage of a case, a plaintiff need only prove by some credible evidence, including his own testimony, that he was minimally qualified for the position from which he was fired. See, e.g., Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1084 (3d Cir. 1996). Because FedEx exempted more senior tractor trailer drivers from performing their traditional courier duties, the Court cannot say with certainty that affording Carcia a similar opportunity would fundamentally change the position. Moreover, FedEx's job description, which would not be dispositive of this issue in any event, does not make it clear that the courier function is intended as an essential function of the job. See Deane, 142 F.3d at 148. Accordingly, genuine issues of material fact exist concerning whether Carcia could perform the essential functions

⁷ Carcia also had difficulty entering and exiting the cab of a tractor trailer because the steps all exceeded his limit of fourteen inches, although he suggests that a simple accommodation would have enabled him to do so. Because the Court has found that Carcia has failed to establish a genuine issue of material fact regarding his disability or FedEx's legitimate non-discriminatory reason for his firing, the Court will not discuss whether entering or exiting the cab was an essential function of the job, whether a reasonable accommodation was either requested or granted in this case, or whether an employee "regarded as" disabled is entitled to such an accommodation. See, e.g., Deane v. Pocono Med. Ctr., 142 F.3d 138, 148-49 n.12 (3d Cir. 1998).

of his job.

C. FedEx's Legitimate Non-discriminatory Reason

FedEx offers Carcia's inability to comply with its Medical Leave of Absence Policy as its legitimate non-discriminatory reason for firing him. Assuming Carcia had presented genuine issues of material fact concerning each element of his prima facie case, FedEx's production of this reason for Carcia's firing would shift the burden back to Carcia, who would then have to prove that his firing was the result of discriminatory animus. For purposes of the instant motion, Carcia would have to present, at a minimum, a genuine issue of material fact concerning the validity of FedEx's proffered reason for Carcia's termination. Carcia has failed to do so.

Aside from the notice to FedEx that Carcia had an ankle injury, no evidence exists that would show that FedEx fired Carcia because of discriminatory animus. Indeed, FedEx did not fire Carcia immediately following his injury or upon learning that it would preclude him from working as a tractor trailer driver; FedEx terminated his employment only after Carcia failed to find another suitable job within ninety days of beginning his medical leave of absence. FedEx's offering Carcia a job in Vineland is not evidence of pretext, even though it was much farther away from his home than his previous job. Even if FedEx

had not offered Carcia the Vineland job, it still would have been able to fire him for non-compliance with their medical leave policy. Indeed, had FedEx failed to offer Carcia any other job, Carcia would no doubt seize on that fact as evidence of discriminatory animus instead. The suggestion that FedEx offered Carcia the Vineland job in an attempt to lend credence to a pretextual reason for his firing is unsupported by the record in this case.

Carcia has failed to present any evidence that FedEx's proffered legitimate non-discriminatory reason for his firing was pretextual or that his termination was the result of discriminatory animus. Accordingly, Carcia has failed to point to a genuine issue of material fact concerning the validity of FedEx's legitimate non-discriminatory reason, making summary judgment in favor of FedEx appropriate. As Carcia would have to prove the existence of discriminatory animus in order to support his Motion for Summary Judgment, the Court will deny that motion.

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O R D E R

AND NOW, this day of January, 2001, in consideration of the Motion for Summary Judgment filed by the Defendant, Federal Express Corp. ("FedEx") (Doc. No. 18), the Response and Cross-Motion for Summary Judgment of the Plaintiff, Vincent Carcia ("Carcia") (Doc. No. 20), the Response of the Defendant and the Plaintiff's reply thereto, it is **ORDERED** that:

1. Plaintiff's Motion for Summary Judgment (Doc. No. 20) is **DENIED**.
2. Defendant's Motion for Summary Judgment (Doc. No. 18) is **GRANTED**.
3. Judgment is **ENTERED** in favor of FedEx and against Carcia.

BY THE COURT:

JAMES MCGIRR KELLY, J.